Before the
FEDERAL COMMUNICATIONS COMMISISON
Washington, D.C. 20554

In the Matter of	)	
	)	
ASAP Paging, Inc.	)	WC 04-6
	)	
Petition for Preemption of Public Utility	)	
Commission of Texas Concerning Retail Rating	)	
Of Local Calls to CMRS Carriers	)	

REPLY COMMENTS OF JOHN STAURULAKIS, INC

April 23, 2004

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Summary

The matter before the Commission necessarily involves the designation of a point of interconnection between a CMRS provider and an incumbent rural local exchange carrier. Comments filed by Sprint Corporation misapply Commission policy and rules regarding the permissible location of the point of interconnection. In these comments, John Staurulakis, Inc. reviews Commission policy and statements that correct Sprint's allegations. John Staurulakis, Inc. seeks to have the Commission affirm that current federal policy provides:

1. Section 251(c)(2) expressly states that POI locations must be within the ILEC's network.
2. After allowing discretion for carriers to choose indirect versus direct interconnection, Commission rules codifying Section 251 duties for interconnection are uniform with respect to Section 251(a) and Section 251(c).
3. The Commission decision to limit a POI within a LATA boundary arose because of an RBOC restriction to carry traffic across LATA boundaries. The LATA boundary has no meaning to rural ILECs in the context of this proceeding. The discussion of LATA POIs is factually limited to RBOCs for whom LATA has meaning.
4. The case law cited by Sprint does not support the claim that RLECs must interconnect outside of their respective networks.

Affirming these principles would help to both clarify the matter in the instant proceeding and provide guidance in the resolution of similar disputes.

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REPLY COMMENTS OF JOHN STAURULAKIS, INC

John Staurulakis, Inc. ("JSI") submits the following Reply Comments in response to the comments of Sprint Corporation ("Sprint") filed in the above captioned matter on March 23, 2004. Notwithstanding that the primary prayer by the petitioner in this matter involves a request that the Commission preempt the Texas Public Utility Commission respecting regulation of the issue, this proceeding presents the Federal Communications Commission ("Commission") with the opportunity to disabuse Sprint of its understanding that Commission policy and rules require rural incumbent local exchange carriers ("RLECs") to interconnect with other telecommunications providers at a point of interconnection ("POI") outside of the RLECs' respective networks. JSI recommends the Commission affirm its current policy and rules described below that belie Sprint's understanding.

1. Sprint's declaration that RLECs must connect to a LATA POI outside their respective networks is over broad and is inconsistent with Commission rules or policy.

In its comments, Sprint characterizes the present dispute as "another example of an ILEC attempting to avoid its obligation to deliver traffic to other networks." *See Sprint Comments, WC Docket No. 04-6, March 23, 2004 ("Sprint Comments") at 1.* The justification for this inflammatory characterization rests upon Sprint's misunderstanding of the routing and rating or telecommunications traffic generally and a specific misapplication of statutory obligations and FCC rules. In summary, Sprint argues that an RLEC must interconnect with other telecommunications providers at a point of interconnection ("POI") designated by the other telecommunications provider outside of the RLEC's network for the mutual exchange of telecommunications traffic.[1]

A long-standing dispute exists between market participants like Sprint and RLECs over the so-called LATA POI issue. JSI submits and will show in these Reply Comments that there is no current Commission rule or policy requiring RLECs to establish a POI outside their respective networks. According to existing Commission rules and policies, CMRS providers and CLECs wishing to interconnect with a RLEC cannot require interconnection at a POI outside the RLEC network.[2]

[1] Sprint believes that Type 2A interconnection at a Class 4 Tandem Switch establishes an interconnection with every ILEC sub-tending the tandem. *See Sprint Comments at 2*.

[2] Sprint equates "POI" with "switch" throughout its comments.

A. Sprint's Main Premise

Sprint argues "the RLEC bears the cost associated with delivering its customers' calls to the wireless carrier switch serving the party being called – even if the interconnection point is not located within the originating local calling area." *See Sprint Comments at 4*. This statement is correct only if placed in the proper context. It is clear from several appellate court cases that an incumbent local exchange carrier ("ILEC") cannot charge the terminating carrier for the transport of ILEC originated telecommunications traffic to a POI located at a technically feasible point within the ILEC's network. However, Sprint mistakenly omits the important fact that the POI must be within the ILEC network. *See Diagrams 1 and 2*.

Diagram 1: Transport of telecommunications traffic originated within an RBOC network to a POI within the RBOC network

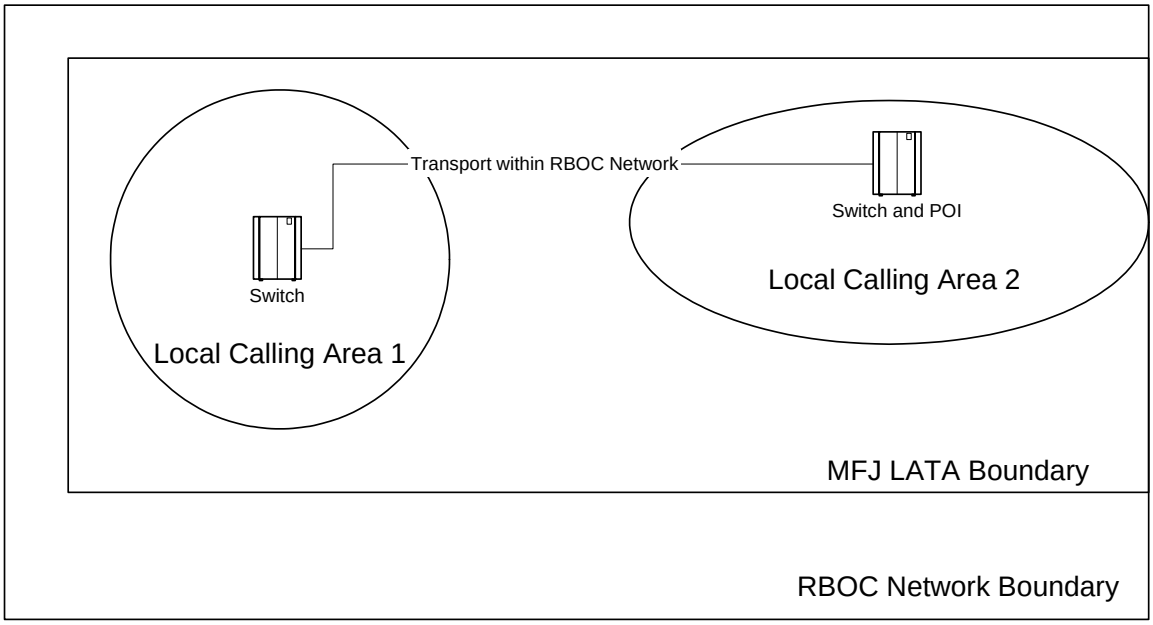
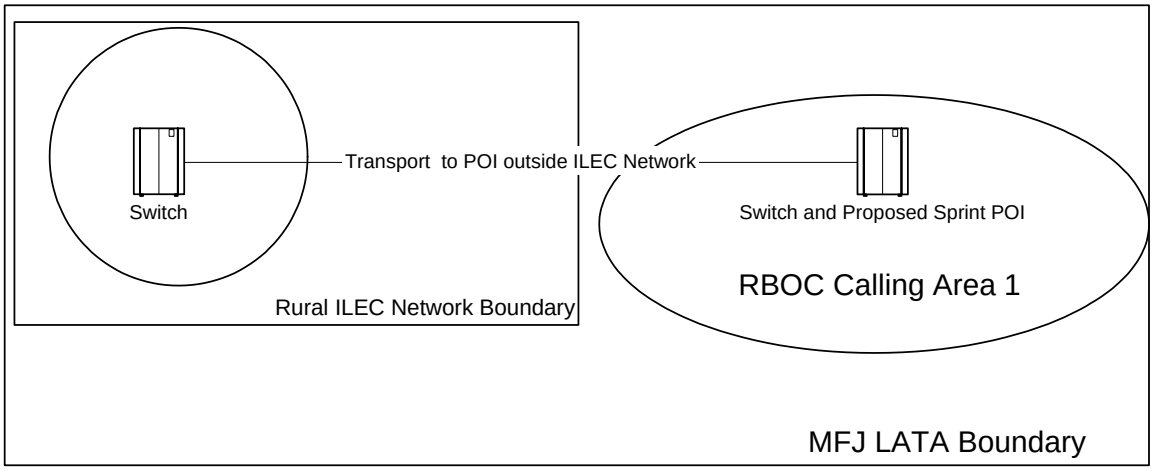


Diagram 2: Transport of RLEC originated traffic to a POI outside the RLEC network



Simply stated, Sprint attempts to apply POI decisions and policies adopted in the RBOC LATA context to independent telephone companies possessing a much different relationship with LATAs. Although affected by LATA constraints, RBOCs generally own network facilities statewide. When all of its service areas are included, an RBOC's network in a state is generally more extensive than a single LATA, not less as is the case for RLECs in the same state. LATAs were originally designed to carve up the Bell operating areas, not consolidate RBOC networks. Specifically, the court imposed LATAs in order to limit toll traffic that the RBOCs could carry to that both originating and terminating within the LATA notwithstanding the RBOCs having networks in multiple LATAs within a state. The LATA structure preserved for AT&T long distance operations and then nascent competitive interexchange carriers the InterLATA market. *See United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1110-13 (D.D.C. 1983).* With respect to independent ILECs, including RLECs, the Commission has long recognized the original LATA limitations only indirectly applied to these entities. This led to development of a policy of "associating" each independent ILECs with a discrete LATA for the routing of toll traffic. *See Petitions for LATA Association Changes by*

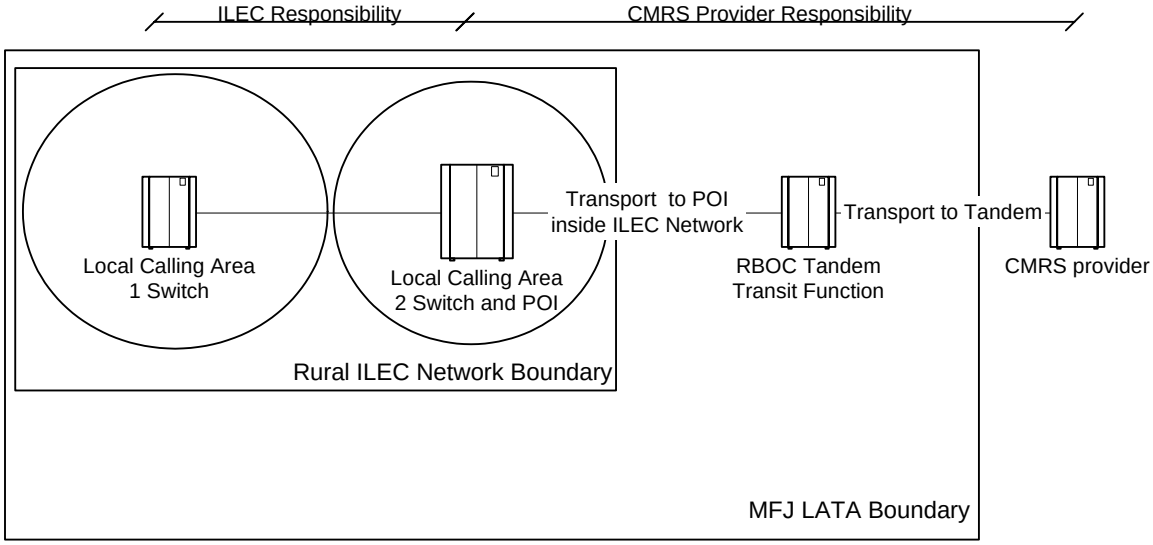
Independent Telephone Companies, CC Docket No. 96-158; Memorandum Opinion and Order, FCC 97-258 (Rel: August 6, 1997). Failure by the Commission to reject Sprint's conflation of "ILEC network" and "LATA" would result in peremptorily redefining an independent ILEC's relationship to its associated LATA as something more than a toll routing parameter. As JSI will show, Sprint's reasoning belies logic and misapplies the Communications Act by arguing that a requirement for a POI in a subset of an RBOCs network that happens to comprise a LATA translates to a requirement that an RLEC deliver traffic to a POI outside of its network just because the POI is in the ILEC's "associated" LATA.

Sprint's errant understanding of the LATA POI issue is repeated several times in its arguments against the positions of both CenturyTel's and, by association, numerous other RLECs. For one example, Sprint states "a carrier may have a single point of interconnection in a LATA." *See Sprint Comments at 7.* JSI submits that Sprint has misapplied the citations from which Sprint bases its understanding. If these authorities are read carefully and fully, Sprint's "one POI per LATA" proclamation is applicable only when the POI is within the RLEC's network. JSI will also show that the LATA limitation is applicable only to RBOCs and not to RLECs. The correct mantra that is supported by statute and Commission policy is "one POI per ILEC network" for the mutual exchange of telecommunications traffic. This general rule applies to all ILECs unless there is a Commission rule that modifies the general case. For RLECs there is no modification of the general rule. For RBOCs, the prohibition to carry traffic across LATA boundaries compels a modification. The RBOC rule is "one POI per LATA and

within the RBOC network." The "within the RBOC network" clause is so patently obvious that in the majority of instances, the clause is not explicitly expressed. However, upon closer inspection, the "within the ILEC network" is always implicated in the discussion by the Commission and appellate courts that have reviewed matters related to this issue. Sprint has incorrectly concluded interconnection is somehow related to the LATA generally and not to each ILEC that may be operating within the LATA.

In JSI's opinion, the Commission should not be misled by Sprint's repeated assertions that the alternative to requiring an RLEC to acknowledge a POI at the RBOC's LATA tandem would be the establishment of a separate switch in the RLEC's serving area. The conflation of "POI" with a "switch" gives short shrift to alternatives less expensive to the CMRS provider. If Sprint and other CMRS providers wish to select indirect interconnection with rural ILECs for delivery of CMRS-originated telecommunications traffic, they may do so; however, the technical and financial obligation of connecting at a technically feasible POI within the RLEC's network to the CMRS provider's network rests on the CMRS provider. *See Diagram 3.*

Diagram 3: Interconnection with RLEC using indirect RBOC Route



B. A Review of Authorities confirms the error of Sprint's position

At notes 11 and 23 in its comments, Sprint references *Mountain Communications v. FCC*, *MCImetro v. BellSouth*, *Southwestern Bell v. Texas Public Utilities Comm'n* as well as the Commission's *Unified Intercarrier Compensation NPRM* and the *Virginia Arbitration Order*.[3] None of these authorities supports Sprint's position that a CMRS provider can mandate a POI outside an ILEC network.

[3] Mountain Communications v. FCC, 355 F.3d 644 (D.C. Cir. 2004) ("*Mountain*"); MCImetro v. BellSouth, 352 F.3d 872 (4th Cir. 2003) ("*MCImetro*"); Southwestern Bell v. Texas Public Utilities Comm'n, 348 F.3d 482 (5th Cir. 2003) ("*Southwestern Bell*"); Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, April 27, 2001, Notice of Proposed Rulemaking ("*Unified Intercarrier Compensation NPRM*"), 16 FCC Rcd 9610 (2001); Virginia Arbitration Order, 17 FCC Rcd 27039, 27181-82 (2002)

1. Appellate Court Case Review

A review of the Court authorities demonstrates Sprint is profoundly wrong in making its declaration that rural ILECs must connect to a LATA POI outside their respective networks for the transport and termination of telecommunications traffic.

i. Mountain Communications, Inc v. FCC

The United States Court of Appeals for the District of Columbia Circuit decided on appeal a POI and transport matter in *Mountain Communications v. FCC*. The facts in *Mountain* clearly show the transport at issue was transport within Qwest's network (*i.e.*, the originating ILEC's network). Mountain Communications selected a POI within Qwest's network and Qwest desired to charge Mountain Communications for transport between calling areas within Qwest's network. The Court states:

> "Though Mountain services all three local calling areas, it uses a single point of interconnection (POI) with Qwest, as it is entitled by statute. *See* 47 U.S.C. § 251(c)(2)(B) (providing that LECs must provide interconnection facilities with other carriers 'at any technically feasible point *within the [incumbent local exchange] carrier's network*'" *See Mountain slip op. at 3,(Emphasis supplied).*

The decision of the Court on this matter is limited to the instance where the POI is located at a technically feasible point within the ILEC's network. Sprint's attempt to support its claim that ILECs must agree to a POI outside their networks on this decision is over broad.

ii. MCImetro v. BellSouth

One month prior to the *Mountain* decision in the D.C. Circuit, the United States Court of Appeals for the Fourth Circuit decided a POI and transport matter in *MCImetro*. Like the D.C. Circuit, the Fourth Circuit Court relied on 47 U.S.C. § 251(c)(2)(B) as the statutory foundation for its decision. This statutory entitlement provides for interconnection at any technically feasible point within the ILEC network. The Court reviewed a state commission decision to "allow BellSouth to charge MCI the incremental cost of transporting calls generated on BellSouth's network from the originating caller's local calling areas to MCI's distant POI." *See MCImetro slip op. at 6*. While the POI happens to be outside a caller's local calling area, it is unmistakable that the POI lies within BellSouth's network. Thus, the facts on which the Court's decision was based are limited to transport to a POI within an ILEC's network. The Court did not address the situation where the POI was outside BellSouth's network because the facts did not require such.

iii. Southwestern Bell Telephone Co. v PUC of Texas, et al.

Less than three months prior to the *MCImetro* decision in the Fourth Circuit, the United States Court of Appeals for the Fifth Circuit decided a POI and transport matter in *Southwestern Bell Telephone v. PUC of Texas, et. al.* The facts under review in Southwestern Bell centered on whether a cost-sharing mechanism is appropriate whereby AT&T would share in the cost of transport to a distant POI within Southwestern Bell's

network. The Court stated: "In its order, the PUC concluded that AT&T could select the location of its POI *on Southwestern Bell's network* without cost considerations, as long as the location was technically feasible." *See Southwestern Bell slip op. at 3 (Emphasis supplied)*. It also states "an ILEC must provide a CLEC interconnection within its network at 'any technically feasible point.'" *See Southwestern Bell slip op. at 8; see also 9 (Court repeats the term "within the carrier's network.")*

It is undisputed that the courts have consistently decided transport cost issues associated with telecommunications traffic within the context of a POI located within the ILEC's network. No appellate court decision cited by Sprint addresses the circumstance now before the Commission in this proceeding; to wit, a CMRS provider seeks a POI outside a RLEC network and desires the ILEC incur any and all transport/transiting costs associated with delivering telecommunications traffic to the CMRS provider's proposed out-of-RLEC-network POI.

2. Commission Statement Review

In its comments, Sprint also references statements by this Commission in support of its claim respecting the duty of a RLEC to transport traffic to a POI outside of the RLEC's network. An examination of these authorities will also show that none of the references support Sprint's claim. There are three citations on which Sprint relies. Each of these citations revolves around discussions in two Commission releases addressing this matter:

the *Unified Intercarrier Compensation NPRM* and an SBC decision.[4] An examination of the Commission's discussions in these releases confirms the spuriousness of the untrammeled claim advanced by Sprint and other CMRS providers seeking to require RLECs to establish POIs outside of their respective networks for the mutual exchange of telecommunications traffic.

i. Unified Intercarrier Compensation NPRM and SBC Decision

Sprint places considerable weight on the description of current rules in a Notice of Proposed Rulemaking rather than considering the foundation for those descriptions. In its *Unified Intercarrier Compensation NPRM*, the Commission states:

> 72. Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA. [note 91] Under a bill-and-keep regime, should this rule still apply? How should carriers select points of interconnection? If a CLEC chooses a point of interconnection outside a local calling area, should the LEC be obligated to meet the CLEC there? Or, should the CLEC be required to locate in every local calling area, or pay the ILEC transport and/or access charges if it does not? CMRS carriers may have several switches per MTA, which can comprise several states and multiple LATAs. Should originating carriers be required to deliver calls to all of a CMRS carrier's POIs? Should the Commission promulgate rules governing the technical requirements of interconnection, as it does for interconnection between CPE and the public switched telephone network? [note 92] We seek comment on how the costs of interconnection should be allocated between carriers in this context. We seek comment on how carriers will allocate the costs of actual interconnection facilities. In addition, we seek comment on how the costs for internal network upgrades necessary for interconnection should be allocated.[note 93]

[4] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, 15 FCC Rcd 18354, FCC 00-238, CC Docket No. 00-65, Memorandum Opinion and Order, June 30, 2000. ("*SBC Decision*")

Despite the obvious weighty questions in this paragraph for which the Commission seeks comment, the key reference for the instant proceeding lies in the first sentence: The Commission states that "CLECs are obligated to provide one POI per LATA." Further in the paragraph, the Commission addresses the question of transport from a local calling area to a POI outside that local calling area. However, it is not clear from the paragraph above whether the POI is required to be within an ILEC network or not.

Fortunately, the Commission provided an answer to the POI location requirement in note 91.

> Note 91: 47 C.F.R. § 51.321; see also In the Matter of Application by SBC Communications Inc. et al. to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 at ¶ 78, n.174 (rel. June 30, 2000).

The rule cited by the Commission, Section 51.321 addresses the methods of obtaining interconnection and access to unbundled elements under Section 251 of the Act. Subpart (b) discusses the technically feasible methods of obtaining interconnection or access to unbundled network elements. These methods include, but are not limited to: (1) Physical collocation and virtual collocation at the premises of an incumbent LEC; and (2) Meet point interconnection arrangements. Both of these instances imply a POI within the ILEC's network. However, the rule states that its list is not inclusive of all types of interconnection. Sprint may have relied on this rule to conclude that a POI could be outside of an ILEC's network; however, reading this subpart in that manner would not support Sprint's declaration of "one POI per LATA," nor would it be consistent with

Commission rules and policy. Nothing in Section 51.321 addresses the description in the NRPM that there is a "one POI per LATA" requirement for RLECs.

If we examine the *SBC Decision*, we discover the source of the "one POI per LATA" theory. In the *SBC Decision*, the Commission stated:

> 78. Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. [note 170] The incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible. [note 171] Thus, new entrants may select the "most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination." [note 172] Indeed, "section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point in the network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points." [note 173] We note that in SWBT's interconnection agreement with MCI (WorldCom), WorldCom may designate "a single interconnection point within a LATA." [note 174] Thus, SWBT provides WorldCom interconnection at any technically feasible point, and section 252(i) entitles AT&T, or any requesting carrier, to seek the same terms and conditions as those contained in WorldCom's agreement, a matter any carrier is free to take up with the Texas Commission. [note 175] *(Emphasis supplied, footnotes omitted)*

From this paragraph we obtain the "POI per LATA" declaration; however, it is clearly placed in the context of the POI being within the ILEC network. The sentence respecting relieving the ILEC obligation based on technical infeasibility supports this understanding. Moreover, in note 170 to the paragraph, the FCC further references Section 251(c)(2),(3) of the Act and Section 51.305(a)(2) of the Commission's rules.[5]

[5] Note 170 of the *SBC Decision*: See 47 USC §251(c)(2),(3); see also 47 CFR §51.305(a)(2); see, e.g., Memorandum of the Federal Communications Commission as Amicus Curiae, US West

We have already discussed §251(c)(2)(B) and providing clear and unambiguous language that interconnection under §251(c) is at any technically feasible point within the ILEC network. We have yet to show that any type of interconnection shall be within the ILEC network because there is also a duty in Section §251(a) that carriers may use to interconnect.

Regarding Section 251(a) interconnection, Commission interpretation of the statute blocks the attempts by Sprint's and other CMRS providers to use this as support for "one POI per LATA" in the context of RLECs. First, the Commission has stated that the hierarchy of Section 251 increases in burdens and obligations as you move from 251(a) to 251(c).[6] Based on this hierarchy, it follows that the ILEC duty in subpart (a) is lesser of a burden that the duty in subpart (c). Interconnection obtained under 251(a) cannot require something more burdensome than what 251(c) requires. A POI outside an ILEC network, as proposed by Sprint, is far more burdensome than a POI inside the ILEC's network. Thus, the Commission should reject Sprint's claim that it is entitled to establish

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Communications, Inc., vs. AT&T Communications of the Pacific Northwest, Inc. et. al, No. CV 97-1575 JE.

[6] *See Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, FCC 01-84, ("*Total Order*") FCC Rcd 5726 at ¶ 25-26 (2001). In the Total Order, at paragraph 25, the FCC reached the following conclusion: "We find nothing in the statutory scheme to suggest that the term "interconnection" has one meaning in section 251(a) and a different meaning in section 251(c)(2). The structure of section 251 supports this conclusion. Section 251(a) imposes relatively limited obligations on all telecommunications carriers; section 251 (b) imposes moderate duties on local exchange carriers; and section 251(c) imposes more stringent obligations on incumbent LECs. Thus, section 251 of the Act "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier involved."61 As explained above, section 251(c) does not require incumbent LECs to transport and terminate traffic as part of their obligation to interconnect. Accordingly, it would not be logical toconfer a broader meaning to this term as it appears in the less-burdensome section 251(a)."

"one POI per LATA, even outside the rural ILEC network." Second, the Commission has declared that:

> We find nothing in the statutory scheme to suggest that the term "interconnection" has one meaning in section 251(a) and a different meaning in section 251(c)(2).

After the type of interconnection is selected by the carriers, the Commission has thus determined that interconnection within 251 is to be uniformly applied. This interpretation appears within the codification of Commission policy in its rules regarding interconnection. Section §51.305 is titled "Interconnection." Section 51.305(a) states:

> (a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:
>
> (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
>
> (2) At any technically feasible point within the incumbent LEC's network including, at a minimum:
>
> (i) The line-side of a local switch;
>
> (ii) The trunk-side of a local switch;
>
> (iii) The trunk interconnection points for a tandem switch;
>
> (iv) Central office cross-connect points;
>
> (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and
>
> (vi) The points of access to unbundled network elements as described in §51.319;
>
> (3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and
>
> (4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and

> conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

There is no distinction in this rule that contrasts 251(a) duties with 251(c) duties. The Commission has codified that interconnection in section 251(a) and 251(c) refers to the same obligation. Consequently, subpart (a)(2) of rule 51.305 provides a definitive and unambiguous rebuttal to Sprint's claim that Commission rules require "one POI per LATA." Although Sprint omits reference to this rule in its comments, the Commission should not allow Sprint to blithely ignore the plain meaning of the rules requiring that a POI must be "at any technically feasible point within the incumbent LEC's network." Any other interpretation of the *Unified Intercarrier Compensation NPRM's* posing of important questions is not faithful to federal rules. Today, the general rule for any ILEC is "one POI per network." This simple rule is in complete harmony with the statute. Questions about in-network transport to the POI are relevant and have been proposed by the *Unified Intercarrier Compensation NPRM* and have been addressed by appellate courts.

The question of how and why the LATA issue arises is an important dimension to this rule. Where does the one POI per LATA claim surface? The LATA boundary issue arises because of Modified Final Judgment ("MFJ") requirements that prohibited RBOCs from transporting traffic across LATA boundaries. Hence, the Commission apparently invoked rule 51.305(a)(4) in the *SBC Decision* -- requiring a POI in every LATA -- so

that RBOC interconnection is "in accordance with the terms and conditions of any agreement, the requirements of Sections 251 and 252 of the Act, and the Commission's rules." *See 47 CFR § 51.305(a)(4), (Emphasis supplied).* The Commission did not need to formally cite the rule because it referred to a SBC interconnection agreement that was consistent with the rule.

In the NPRM there is a discussion of single point of interconnection rules. *See Unified Intercarrier NPRM at 112-114.*[7] In this discussion the NPRM refers to the paragraph

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[7] We include the complete citation to this discussion relating to in-network cost issues.

> 112. As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA.179 Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network.180 These rules also require that an ILEC compensate the other carrier for transport181 and termination182 for local traffic that originates on the network facilities of such other carrier.183 Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI.184 Some ILECs will interconnect at any POI within a local calling area; however, if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area.185 CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI.186
>
> 113. If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?187
>
> 114. Finally, we are concerned that the interplay of our single POI rules and reciprocal compensation rules may lead to the deployment of inefficient or duplicative

previously discussed in regard to the LATA rule. A close examination of these paragraphs reveals that the discussion incorrectly describes other Commission rules, in addition to not fully explaining the context of the one POI per LATA requirement for RBOCs. For example, at paragraph 112, the NPRM states "our current reciprocal compensation rules … require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of *such other carrier*." This characterization of the Commission rules is obviously incorrect because the ILEC would be compensated rather than pay compensation for traffic that it terminated. The Commission rules require the originating carrier to compensate the terminating carrier. *See 47 CFR 251.701-717*. The NPRM got it wrong when it reviewed this rule. This shows reliance on NPRM statements is not dispositive of a Commission rule when such statements are in conflict with Commission rules and policy. The Commission has recently had occasion to point out the lack of authority respecting statements of policy made outside of the complete administrative procedures process. This week it stated: "Statements of policy in a Report to Congress or a Notice of Proposed Rulemaking – even if clear – cannot change our rules." *See In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are*

> networks. By requiring an ILEC to interconnect with a requesting carrier at any technical feasible point in a LATA of that carrier's choosing, are we compelling inefficient network design by forcing the LEC to provision extra transport? Or, by requiring carriers to pay ILECs for transport outside a local calling area, are we forcing the competitive carrier into an inefficient replication of the ILEC network? Assuming that the ILEC receives reciprocal compensation for transporting terminating traffic, how precisely does a distant POI unfairly burden the LEC? Is the efficiency concern limited to those instances in which traffic between two networks is unbalanced and/or where transport is required beyond a certain distance? We seek comment on these questions, and any other issues related to the interplay between our single POI rules and our reciprocal compensation rules. (footnotes omitted)

Exempt from Access Charges, Order, WC Docket No. 02-361, FCC 04-97, April 21, 2004, at 16.

2. Conclusion

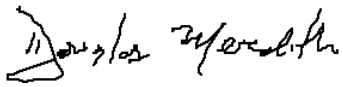
In the event the Commission adopts preemption in this matter, the Commission should disregard the arguments of Sprint and others that a "one POI per LATA" policy requires RLECs to transport wireline-to-wireless traffic to a POI outside the ILEC's network. Instead, JSI encourages the Commission to take this opportunity to affirm that:

1. Section 251(c)(2) expressly states that POI locations must be within the ILEC's network.
2. After allowing discretion for carriers to choose indirect versus direct interconnection, Commission rules codifying Section 251 duties for interconnection are uniform with respect to Section 251(a) and Section 251(c).
3. The Commission decision to limit a POI within a LATA boundary arose because of an RBOC restriction to carry traffic across LATA boundaries. The LATA boundary has no meaning to rural ILECs in the context of this proceeding. The discussion of LATA POIs is factually limited to RBOCs for whom LATA has meaning.
4. The case law cited by Sprint does not support the claim that RLECs must interconnect outside of their respective networks.

Affirming these principles would help to both clarify the matter in the instant proceeding and provide guidance in the resolution of similar disputes.

Respectfully submitted,

April 23, 2004 **John Staurulakis, Inc.**

By: 

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